



South Dakota Public Utilities Commission

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State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

October 11, 2000

Magalie Roman Salas
FCC Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, SW, TW-A325
Washington DC 20554

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Relay South Dakota
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Internet Website
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RE: CC Docket No. 94-129

Dear Ms. Salas:

Pursuant to the procedures established in the FCC's *First Order On Reconsideration* in CC Docket No. 94-129 released May 3, 2000, the South Dakota Public Utilities Commission is electing to take primary responsibility for resolving South Dakota consumers' slamming complaints effective October 16, 2000. The information required to be included in the state notification by 47 C.F.R § 64.1110(a) and ¶29 of the May Order is provided below:

Complaint Process

Method of Filing: Consumers may contact the South Dakota Public Utilities Commission regarding their slamming complaints by letter, fax, office visit or telephone call to the Commission.

Location of Filing:

Mailing address: South Dakota Public Utilities Commission
State Capitol Building, 500 E Capitol
Pierre SD 57501

Toll-free consumer complaints phone number: 1-800-332-1782
Fax number: 1-605-773-3809

Filing Fees: None

Documentation Consumer Must Provide: Staff will request a copy of the consumer's complete telephone bill which contains the alleged unauthorized carrier's charges. An investigator will contact the alleged unauthorized carrier and request proof that, prior to switching the consumer, the carrier obtained appropriate authorization from the consumer, pursuant to SDCL 49-31-89.

Procedure (Safeguards, Deadlines, Appeal Rights): The Commission will be applying its more stringent rules, which are attached. For an informal complaint, the alleged unauthorized carrier is required by PUC rule to provide documentation within 30 days that the change was authorized. If a formal complaint is filed, the alleged unauthorized carrier

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must file an answer to the complaint within twenty days. Our verification requirements include written letters of agency, electronic authorization, and independent third-party verification.

Upon receipt of the carrier's proof of authorization, typically a tape-recorded independent third-party verification or a letter of agency, the investigator listens to the tape or reads the letter of agency in order to determine if the verification complies with state law and PUC rule. Any evidence supplied by the consumer is also taken into account.

If the investigator determines the carrier verification provided by the carrier complies with state law, the consumer is notified that the investigator found no slam occurred. If the investigator determines the verification was inadequate, then the carrier and consumer are informed that a slam did occur and, in accordance with 47 U.S.C. § 258 (b), both the federal and state remedies apply. Pursuant to state statute, the consumer is not liable for any charges attributable to telecommunications services provided by the unauthorized carrier. You will note that the PUC's rules do not address carrier-to-carrier compensation. It is our understanding that, to date, carriers have not sought compensation for lost revenues, as the result of slamming, from the unauthorized carriers. We also note that ¶ 86 of the FCC's August 15 Slamming Order acknowledges a possible carrier-to-carrier resolution of inter-carrier concerns.

If the carrier fails to provide proof of authorization or does not respond to the complaint at all, the investigator determines a slam did occur and notifies the carrier and consumer of that finding. A carrier or consumer who is not satisfied with the informal resolution of a slamming complaint may pursue the matter further by filing a formal complaint with the PUC. A carrier or consumer who is not satisfied with the PUC's formal decision may ask for reconsideration or appeal the decision to circuit court.

FCC-State Coordination:

Reporting: The South Dakota PUC complaint staff enters each complaint that is investigated into our complaint database. In accordance with ¶34 of the May Order, we agree to regularly file information with the FCC that details slamming activity in South Dakota to facilitate joint enforcement activities.

Coordination: The primary contact for the FCC for coordination of FCC complaint referrals and State reporting is:

Leni Healy
Telephone: (605) 773-3201
Fax: (605) 773-3809
Email: leni.healy@state.sd.us

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The South Dakota PUC looks forward to working with the FCC in this effort.

Sincerely,


Jim Burg
Chairman


Pam Nelson
Vice Chairman


Laska Schoenfelder
Commissioner

Attachment

cc: FCC Consumer Information Bureau Chief

CHAPTER 20:10:34
PROHIBITION AGAINST UNAUTHORIZED CHANGING OF
TELECOMMUNICATIONS COMPANY AND CHARGING FOR
UNAUTHORIZED SERVICES

Sec.

- 20:10:34:01. Definitions.
- 20:10:34:02. Requirements for independent third-party verification.
- 20:10:34:02.01. Authorization methods.
- 20:10:34:03. Letter of agency form and content.
- 20:10:34:04. Exception for checks.
- 20:10:34:04.01. Electronic authorization.
- 20:10:34:05. Complaints of unauthorized changing of a telecommunications company.
- 20:10:34:06. False, misleading, or deceptive statements prohibited.
- 20:10:34:07. Refund or credit of charges billed by unauthorized telecommunications company - Payment for unauthorized change - Opportunity for hearing.
- 20:10:34:08. Subscriber telecommunications bills - Charges for change of telecommunications company.
- 20:10:34:09. Billing requirements.
- 20:10:34:10. Notification of increase in rates.
- 20:10:34:10.01. Complaints of unauthorized billing of products or services.
- 20:10:34:11. Refund or credit of unauthorized charges - Payment for unauthorized charge - Opportunity for hearing.

20:10:34:01. Definitions

Repealed.

Source:

25 SDR 89, effective December 27, 1998; repealed, 25 SDR 167, effective July 1, 1999.

20:10:34:02. Requirements for independent third-party verification

Repealed.

Source:

25 SDR 89, effective December 27, 1998; repealed, 25 SDR 167, effective July 1, 1999.

20:10:34:02.01. Authorization methods

No telecommunications company may change a designated telecommunications company for interexchange or local exchange telecommunications services unless the change has been confirmed by written authorization in accordance with § 20:10:34:03, by the use of an independent third-party verification company in accordance with SDCL 49-31-90, or by electronic authorization in accordance with § 20:10:34:04.01.

Source:

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25 SDR 167, effective July 1, 1999.

General Authority:

SDCL 49-31-89.

Law Implemented:

SDCL 49-31-89, 49-31-90, 49-31-91.

20:10:34:03. Letter of agency form and content

A letter of agency obtained from a subscriber for a change of the subscriber's telecommunications company shall be a written document. The sole purpose of the letter of agency is to authorize the change of a telecommunications company. It must be signed and dated by the subscriber of the telephone line requesting the change. It may not be combined with inducements of any kind on the same document. At a minimum, the letter of agency must be printed with a type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

- (1) The subscriber's billing name and address and each telephone number to be covered by the change order;
- (2) The decision to change the telecommunications company from the current telecommunications company to the prospective telecommunications company;
- (3) That the subscriber designates the prospective telecommunications company to act as the subscriber's agent for the telecommunications company change;
- (4) That the subscriber understands that only one interexchange telecommunications company may be designated as the subscriber's interLATA primary interexchange telecommunications company, only one company may be designated as the subscriber's intraLATA primary interexchange company, and only one company may be designated as the subscriber's local exchange company;
- (5) The telecommunications company designated as the subscriber's interexchange or local exchange company must be the company directly setting the rates for the subscriber;
- (6) That the subscriber understands that any change in a subscriber's interexchange or local exchange service company may involve charges to the subscriber. The approximate amount of each charge shall be specified in the letter of agency;
- (7) Letters of agency may not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications company;
- (8) If any portion of a letter of agency is translated into another language then each portion of the letter of agency must be translated into that language. Each letter of agency must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the letter of agency; and
- (9) A toll-free number of the prospective telecommunications company.

Source:

25 SDR 89, effective December 27, 1998; 25 SDR 167, effective July 1, 1999.

General Authority:

SDCL 49-31-89.

Law Implemented:

SDCL 49-31-89.

20:10:34:04. Exception for checks

Notwithstanding § 20:10:34:03, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in § 20:10:34:03 and the necessary information to make the check a negotiable instrument. The letter of agency check may not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the subscriber is authorizing a change in its telecommunications company by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

Source:

25 SDR 89, effective December 27, 1998; 25 SDR 167, effective July 1, 1999.

General Authority:

SDCL 49-31-89.

Law Implemented:

SDCL 49-31-89.

20:10:34:04.01. Electronic authorization

Each telecommunications company electing to confirm changes electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Electronic authorization to change a designated telecommunications company for interexchange or local exchange telecommunications services shall be placed from the telephone number that the subscriber is requesting the company serve and shall confirm the information required in § 20:10:34:03. Any call to the toll-free number shall connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the change of a designated telecommunications company, and shall automatically record the originating automatic numbering identification.

Source:

25 SDR 167, effective July 1, 1999.

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General Authority:

SDCL 49-31-89.

Law Implemented:

SDCL 49-31-89.

20:10:34:05. Complaints of unauthorized changing of a telecommunications company

Upon receipt of an oral or written complaint alleging an unauthorized change of a subscriber's telecommunications company from the subscriber, the subscriber's original pre-subscribed telecommunications company, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the change shall provide documentation, within 30 days and without cost, showing that the change was authorized. The documentation shall be provided to the person alleging the unauthorized change. The company that initiates the change is the company that requests on behalf of a subscriber that the subscriber's telephone company be changed and seeks to provide retail services to the subscriber. If a telecommunications company fails to provide the documentation, the change of the telecommunications company is considered invalid.

The telecommunications company shall also notify the subscriber that if the subscriber is not satisfied with the documentation provided by the company, the subscriber may contact the commission. The telecommunications company shall provide the subscriber with the commission's toll free number.

Source:

25 SDR 89, effective December 27, 1998; 25 SDR 167, effective July 1, 1999.

General Authority:

SDCL 49-31-89.

Law Implemented:

SDCL 49-31-89, 49-31-90, 49-31-92, 49-31-93.

20:10:34:06. False, misleading, or deceptive statements prohibited

When obtaining or verifying a subscriber's oral order for a change of a designated telecommunications company for interexchange or local exchange telecommunications services, the telecommunications company or the third-party verification company may not make any statements that are false, misleading, or deceptive or fail to state material information with respect to the provisioning of the service.

Source:

25 SDR 89, effective December 27, 1998; 25 SDR 167, effective July 1, 1999.

General Authority:

SDCL 49-31-89.

Law Implemented:

SDCL 49-31-89.

20:10:34:07. Refund or credit of charges billed by unauthorized telecommunications company - Payment for unauthorized change - Opportunity for hearing

A telecommunications company which initiates a telecommunications company change without authorization from the subscriber shall issue to the subscriber a full credit or refund of the entire amount of the subscriber's telephone charges which are attributable to telecommunications services from the unauthorized telecommunications company. A telecommunications company which initiates a telecommunications company change without authorization from the subscriber is liable for any charges from another telecommunications company to re-establish service or to change the subscriber's pre-subscribed company. The appropriate credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the change was unauthorized.

In addition, the telecommunications company which initiates a telecommunications company change without proper authorization shall pay the subscriber the amount required by SDCL 49-31-93 regardless of whether the subscriber has contacted the commission. Failure of the telecommunications company to pay the subscriber for an unauthorized change may result in a civil fine as authorized by SDCL 49-31-94. If there is a dispute as to whether the change was properly authorized, the subscriber or telecommunications company may request a hearing before the commission pursuant to SDCL chapter 1-26.

Source:

25 SDR 89, effective December 27, 1998; 25 SDR 167, effective July 1, 1999.

General Authority:

SDCL 49-31-89.

Law Implemented:

SDCL 49-31-89, 49-31-93, 49-31-94.

20:10:34:08. Subscriber telecommunications bills - Charges for change of telecommunications company

A bill to a subscriber reflecting any charge for changing the subscriber's telecommunications company shall prominently display the name of the new telecommunications company and all charges to the subscriber for changing to the new telecommunications company.

Source:

25 SDR 89, effective December 27, 1998; 25 SDR 167, effective July 1, 1999.

General Authority:

SDCL 49-31-89.

Law Implemented:

SDCL 49-31-89.

20:10:34:09. Billing requirements

A subscriber's bill shall contain a clear, concise description of services being billed. The bill shall contain the name of the telecommunications company requesting billing, and a toll-free telephone number where the subscriber may call with billing questions.

Source:

25 SDR 89, effective December 27, 1998; 25 SDR 167, effective July 1, 1999.

General Authority:

SDCL 49-31-77, 49-31-85, 49-31-89.

Law Implemented:

SDCL 49-31-3, 49-31-77, 49-31-85, 49-31-89.

20:10:34:10. Notification of increase in rates

Prior to changing any rate, term, or condition of service, a telecommunications company shall notify the subscriber of the change if it may result in an increase in rates. Written notification of an increase in rates shall be stated on the bill, a bill insert, or a separate letter for each customer who has pre-subscribed to the company for toll or local exchange service. If the customer has not pre-subscribed to the company, notification of an increase in rates shall be made through newspaper publication or by any other reasonable means.

Source:

25 SDR 89, effective December 27, 1998; 25 SDR 167, effective July 1, 1999.

General Authority:

SDCL 49-31-77, 49-31-85, 49-31-89.

Law Implemented:

SDCL 49-31-3, 49-31-77, 49-31-85, 49-31-89.

20:10:34:10.01. Complaints of unauthorized billing of products or services

Upon receipt of an oral or written complaint alleging the billing of an unauthorized product or service from a subscriber, the subscriber's local exchange service company, or from the commission or its staff on behalf of a subscriber or applicant, the telecommunications company that initiated the billing shall provide documentation, within 30 days and without cost, that the billing was authorized. The documentation shall be provided to the person alleging the unauthorized billing. The company that initiates the billing is the company that requests billing for a product or service on behalf of a subscriber and seeks to provide the product or service to the subscriber. If a telecommunications company fails to provide the documentation, the charge is considered invalid.

The telecommunications company shall also notify the subscriber that if the subscriber is not satisfied with the documentation provided by the company, the subscriber may contact the commission. The telecommunications company shall provide the subscriber with the commission's toll free number.

Source:

25 SDR 167, effective July 1, 1999.

General Authority:

SDCL 49-31-89.

Law Implemented:

SDCL 49-31-89, 49-31-93.

20:10:34:11. Refund or credit of unauthorized charges - Payment for unauthorized charge - Opportunity for hearing

A telecommunications company which initiates billing for a product or service without authorization from the subscriber shall issue to the subscriber a full credit or refund of the entire amount of the unauthorized charges. The credit or refund must be issued within a period not to exceed 60 days from the date it is determined that the charge was unauthorized.

In addition, the telecommunications company shall pay the subscriber the amount required by SDCL 49-31-93 regardless of whether the subscriber has contacted the commission. Failure of the telecommunications company to pay the subscriber for an unauthorized charge may result in a civil fine as authorized by SDCL 49-31-94. If there is a dispute as to whether the charge was authorized, the subscriber or telecommunications company may request a hearing before the commission pursuant to SDCL chapter 1-26.

Source:

25 SDR 89, effective December 27, 1998; 25 SDR 167, effective July 1, 1999. 1-2000

General Authority:

SDCL 49-31-89.

Law Implemented:

SDCL 49-31-89, 49-31-93, 49-31-94.

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